

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
VUGO, INC.,

Plaintiff,

15 CV 8253 (RA)

- against -

CITY OF NEW YORK,

Defendant.
-----X

**DEFENDANT'S STATEMENT OF
UNDISPUTED MATERIAL FACTS
PURSUANT TO LOCAL CIVIL RULE 56.1**

Pursuant to Rule 56.1 of the Civil Rules of the Southern District of New York, Defendant, THE CITY OF NEW YORK, by its attorney, ZACHARY W. CARTER, Corporation Counsel of the City of New York, submits the following statement of material facts as to which it contends there is no genuine issue to be tried:

TLC's Regulatory Authority and Background Industry Information

1. The New York City Taxi and Limousine Commission ("TLC") is an agency of the City of New York responsible for the "regulation and supervision of the business and industry of persons by licensed vehicles for hire in the city...." See Declaration of Ryan Wanttaja ("Wanttaja Declaration") ¶¶ 3 and 5; see also New York City Charter ("Charter") §§ 2300, 2303(a).

2. The TLC is mandated to consider "the promotion and protection of ... public comfort" in its adoption and establishment of an overall transportation policy. Wanttaja Declaration ¶ 4; see also Charter § 2300.

3. At present, the TLC licenses and regulates 94,983 vehicles for hire in the City of New York. See Wanttaja Declaration ¶ 7.

4. TLC licenses and regulates medallion (yellow) taxicabs, For-Hire Vehicles (“FHV’s”), paratransit vehicles, and commuter vans. See id.

5. The FHV industry includes community-based liveries, black cars, luxury limousines, and street hail (green) liveries (“SHLs”). See id.

6. At present, there are 13,576 medallion taxicabs, 289 paratransit vehicles, and 471 commuter vans. See id.

7. At present, there are 80,647 FHV’s, consisting of 18,848 liveries, 49,801 black cars, 5,119 luxury limousines, and 6,879 SHLs. See id.

Vehicle Technology Systems and Interior Advertising

8. Medallion taxicabs are required install a taxicab technology system called the Taxicab Passenger Enhancement Program (“TPEP”). See id. ¶ 13.

9. The TPEP provides four core services: the ability for passengers to pay via credit/debit cards; the ability for drivers to receive and send text messages; collection and transmission of trip data; and a passenger information monitor (“PIM”) located in the passenger compartment of the vehicle. See id.

10. Section 58-32(f) of Title 35 of the Rules of the City of New York (“RCNY”) prohibits the display of advertising inside of medallion taxicabs unless the advertising has been approved by the TLC. See id. ¶ 20; see also 35 RCNY 58-32(f).

11. TLC permits advertising on the PIM of the TPEP system. See Wanttaja Declaration ¶¶ 29, 47; see also 35 RCNY 58-32(f)(2).

12. TLC has authorized advertising on the PIM since May 2005. See Wanttaja Declaration ¶ 38.

13. Prior to May 2005, TLC had never authorized advertising in the interior of a medallion taxicab. See id.

14. The PIM is the only place on the interior of a medallion taxicab where advertising is permitted. See id. ¶¶ 29, 47.

15. SHLs are required to install a Street Hail Livery Technology System (“LPEP”). See id. ¶ 44.

16. The LPEP system must be capable of accepting payment via credit/debit cards, receiving and sending text messages, and collecting and transmitting trip data. See id.

17. TLC does not require the installation of a PIM in SHLs. See id. ¶ 45.

18. Sections 59A-29(e) and 59B-29(e) of Title 35 of the RCNY prohibit the display of advertising inside of FHV’s unless the advertising has been approved by the TLC. See id. ¶ 2.

19. TLC authorizes advertising on the PIM of the LPEP system. See id. ¶ 45; see also 35 RCNY 82-33(f)(2).

20. The PIM is the only place on the interior of a SHL where advertising is authorized. See Wanttaja Declaration ¶¶ 45, 47.

21. Advertising is not permitted in a SHL if the LPEP system does not have a PIM. See id. at ¶ 45.

22. TLC does not require a vehicle technology system in any vehicle other than medallion taxicabs or SHLs. See id. ¶ 47.

23. SHLs are the only class of the FHV industry that is currently authorized to display interior advertising. See id. ¶ 47.

24. Interior advertising is not currently permitted in 73,768 FHVs. See id. ¶¶ 7, 29.

25. TLC does not permit interior advertising in paratransit vehicles or commuter vans. See id. ¶ 29.

26. TLC has authorized advertising in 20,455 of the 94,983 vehicles that it licenses and regulates. See id. ¶¶ 7, 29, and 45-47.

27. Interior advertising is currently only permitted in approximately 22 percent of the vehicles that are licensed and regulated by TLC. See id. ¶¶ 7, 29, and 45-47; see also infra. ¶ 26.

28. TLC authorized interior advertising in medallion taxicabs and SHLs to offset the installation costs and monthly fees associated with the TPEP and LPEP systems, respectively. See Wanttaja Declaration ¶¶ 36-37, 45, and 47.

Distinguishing Characteristics of Medallion Taxicabs, SHL's and Non-SHL FHVs

29. Medallion taxicabs have the exclusive right to accept street hails in all locations of the City of New York. See id. ¶ 9.

30. SHLs are authorized to accept street hails in the Bronx, Brooklyn, Staten Island, Queens (with the exception of JFK and LaGuardia airports), and in Manhattan north of West 110th Street and north of East 96th Street. See id. ¶¶ 19, 40.

31. Medallion taxicabs and SHLs are the only industries regulated by the TLC that are authorized to accept street hails in the City of New York. See id. ¶¶ 16, 43.

32. Transportation by FHV is pre-arranged, meaning that a potential passenger contacts a licensed for-hire vehicle base to request a ride in return for a fare. See id. ¶ 16.

33. Medallion taxicabs and SHLs must charge a metered rate of fare set by the TLC. See id. ¶¶ 11, 18-19, and 42.

34. FHV is not required to charge a metered rate of fare. See id. ¶ 18.

Alternative Technology Systems Pilot Program

35. In October 2015, TLC approved a pilot program to test and evaluate alternative technology systems that do not have a PIM. See id. ¶ 51; see also Exhibit I to the Wanttaja Declaration at NYC0462.

36. To date, TLC has approved one pilot participant – Flywheel Software, Inc. (“Flywheel”). See Wanttaja Declaration ¶ 51.

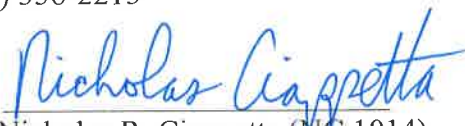
37. Flywheel’s system does not have a PIM. See id.

38. Advertising is not permitted on Flywheel’s system. See id.

Dated: New York, New York
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Respectfully submitted,

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By: 
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